

DATE: November 20, 2022

FROM: Mitchell Kossoff

TO: Hon. David S. Jones
US Bankruptcy Court
Southern District
One Bowling Green
New York, NY 10004

Re: In Re Kossoff PLLC- 21-10699
Togut v. Valley National et al: 22-01113
Togut v. BK Trust et al: 22-01141
Togut v. Phyllis Kossoff: 22-01146

Dear Judge Jones:

I am hoping that either Walter Mack, Esq. or David Bolton, Esq. will forward a copy of this email to you since I cannot do so because of the limitations of the JAYPAY system which I have discussed in prior correspondence.

I write this letter for a few reasons. To begin with I am aware that conferences have been scheduled in all of the above matters which require my attendance. It is my understanding that the VNB matter is scheduled for conference on 12/12/22 at 10AM and that conferences in the BK Trust and Phyllis Kossoff adversarial proceedings are scheduled for January 19, 2023 also at 10AM. In connection with the foregoing, I would just like to respectfully remind the Court that in order for me appear via zoom or in any other manner, the Court must reach out directly to Groveland CF to set this up.

Continuing it is with great sadness that I must inform the Court that my mother, Phyllis L. Kossoff, passed away on November 15, 2022 and inasmuch as she was a named defendant in all of the above proceedings - a discussion must be had as well as to how these litigations are to proceed in her absence.

Also I am mindful of the fact that when last we conferenced the VNB matter the Court was concerned as to whether or not I would enter into the same sort of stipulation entered into by the other defendants which had as its intent the streamlining of this litigation and to foster a possible settlement. I had indicated to you at that time that I could not enter into such a stipulation unless Team Togut forwarded to me all of the VNB documents upon which their claims against my mother and I were based.

To Team Togut's credit in late October I did receive a thoughtfully put together compendium of documents relative to the Trustee's claims in the VNB proceeding. However and crucially missing from this document tender were copies of the actual loan guarantees executed by both my mother and I apparently in 2009 and upon which the within Complaint is posited. I cannot believe that if the Trustee had in its possession these seminal documents that it would have purposefully withheld them from me although I do find it to some extent reckless to sue upon instruments - the contents of which Plaintiff has never reviewed.

For this reason I will not be entering into the proposed stipulation because I cannot properly formulate with any degree of particularity defenses to instruments which I have not been able to fully review. Instead and before the end of this month and assuming that these alleged loan guarantees cannot be produced, I will be forwarding a letter draped with both facts and law which demonstrates that as a matter of incontrovertible fact the causes of action against both my mother and myself in the VNB proceeding must be summarily dismissed.

Although as outlined in my detailed answer to the VNB Complaint there are many other formidable defenses to any liability for either my mother or myself in connection with the VNB loans, the letter which will be sent later this month to all concerned parties will focus on those arguments which would lend themselves to a dismissal of the complaint as against the Kossoff defendants if a motion for summary judgment were necessitated. It will be contended that summary judgment in the Kossoff defendants favor would necessarily be awarded because (a) the Kossoff/BP loan guarantees were only extended to VNB New York, LLC and/or VNB New York Corp. and not to any other third party; and/or (b) that the VNB/BP loans were paid off in full thus the loan guaranty obligations were fully discharged and cannot be resurrected by the Trustee; and/or (c) that at no time prior to the loans' repayment did the Lender declare a DEFAULT which would triggered liability under the loan guarantees.

Thank you for your attention to and cooperation in this matter.

Respectfully Submitted,
/s/ Mitchell Kossoff
MITCHELL KOSSOFF